

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6213 of 1995

WITH

CIVIL APPLICATION NO. 4475 OF 1996.

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes

2. To be referred to the Reporter or not? Yes

3. Whether Their
J of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?
No.

OIL & NATURAL GAS CORPORATION LTD

Versus

PADHIYAR BHIKHABHAI BUDHABHAI

Appearance:

MR.KAMAL TRIVEDI FOR M/S TRIVEDI & GUPTA for Petitioner

MRS. SANGEETA PAHWA FOR MR. PM THAKKAR for
Respondent Nos. 1 to 12.

MR.N.R.SHAHANI FOR respondent Nos. 13 to 28.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 19/06/96

ORAL JUDGEMENT

This Special Civil Application is directed
against an award dated 13.3.1995 passed by the Industrial

Tribunal, Vadodara in Reference (ITC) No. 4 of 1991 whereby the Industrial Tribunal granted the relief of regularisation to the respondents. The operative part of the order dated 13.3.1995 is as under :

"All the workmen concerned in the present reference and enumerated above are ordered to be absorbed as regular employees of the Corporation as Khalasi Grade III and their seniority would be fixed as indicated in the table in Para (1) of this award. The Corporation is directed to circulate the arrears of wages becoming payable to them after deducting what has been already paid to them on the basis that each of them became Khalasi Grade III in the regular employment of the Corporation from the date indicated in the abovementioned table and that the said amounts shall be paid to the workmen within four months from the date of publication of this award. All the concerned 28 workmen are declared to have become entitled to all the benefits available to the regular employees of the corporation without any discrimination. The Corporation to pay cost of Rs.5,000/- (Rupees Five Thousand only) to the Union within one month from the publication of this award."

There is no dispute between the parties that the concerned employees were working in the Central Workshop Canteen at Vadodara and the relief of regularisation as a part of the statutory obligation has been granted to them.

When the matter came up before this Court on 12.12.1995 Mr.Thakkar who had appeared on behalf of respondent Nos. 1 to 12 had submitted that the respondents represented by him may be granted relief of regularisation in terms of the award from 1.1.1990 and at the time when the matter comes up for final disposal the award may be modified qua them accordingly. It is submitted by Mr.Kamal Trivedi that the orders granting relief to these 12 respondents from 1.1.1990 have already been issued and there is no existing lis between the petitioner corporation and these 12 respondents.

The case of the other respondents was sought to be distinguished by the learned counsel for the corporation on the ground that the respondent Nos. 1 to 12 had been appointed by the petitioner corporation itself from the very beginning whereas other employees had been appointed with the contractor and therefore the

petitioner corporation was right in granting the relief of regularisation to the respondents No. 1 to 12 from 1.1.1990 and it was prepared to grant the same relief to other respondents (except nos. 20 and 28) from 1.1.1995.

Mr. Shahani learned counsel for the respondent Nos. 13 to 28 who are all represented through Vadodara Mazdoor Sabha submitted that whereas all these employees had been working in the canteen which was run by the corporation as a part of the statutory obligation no distinction could be made on the ground that the certain employees had been appointed by the corporation and others had been appointed with the contractor because all were working in the canteen and in such cases where the employees are working with the contractor in the canteen which is required to be run under the statute, the Supreme Court has already considered the matter and it has been laid down that even the persons employed on contract basis are at par with those who are appointed by the corporation itself.

However Mr. Shahani appearing for respondent Nos. 13 to 28 submitted that this petition should not be heard on merits and should be straight way rejected on the ground that the union has not been impleaded as a party respondent and the petitioner in this case by way of adding individual workers as respondents had tried to divide the workmen and according to Mr. Shahani in such cases the Union is a necessary party. Mr. Kamal Trivedi, appearing for the petitioner submitted that the cause title of the present petition is verbatim copy of the cause title as was in the impugned award and even in the impugned award after naming the 28 respondents it was mentioned in the bottom that " all represented by Baroda Mazdoor Sabha, Shram Sadan, Raopura, Baroda." and exactly in the same terms it has been mentioned by the petitioner in the cause title of this petition and even before the Industrial Tribunal the first 12 respondents were also represented by Shri Sudhir Shah, Advocate separately although Mr. Shahani was also appearing for the workmen. I find from the record and after comparing the cause title as given in the award and in the petition that the cause title in the petition is the same as it was before the Industrial Tribunal. Even if the Union i.e. Vadodara Mazdoor Sabha is held to be a necessary party, the petition cannot be thrown on this ground for the simple reason that the petitioner in such cases has also to be given an opportunity to implead such party and only thereafter if the petitioner fails to implead such necessary party that the petition can be rejected on such

a ground. In the facts of this case I find that all the respondents have been served as represented through Baroda Mazdoor Sabha and hence no useful purpose is now going to be served by issuing notice to the Union because each and every affected employee has been served and all the respondents are represented through lawyer. Respondents Number 1 to 12 are represented through Mr.Thakkar and 13 to 28 through Mr.Shahani. Therefore the petition cannot be thrown and rejected on the ground that the union has not been impleaded as party more particularly when the union as such by name was not a respondent even before the Industrial Tribunal and all the 28 respondents even before the tribunal were there in their own name and through the Baroda Mazdoor Sabha as is the case in the cause title in the petition before this Court. Even this fact is established on record that first 12 respondents were represented by Shri Sudhir Shah, Advocate separately before the Industrial Tribunal as against other respondent Nos. 13 to 28, may be that Mr.Shahani was also representing all the 28 respondents there, because Mr.Shahani's case is that before the Industrial Tribunal he was representing all the respondents on the instructions of Baroda Mazdoor Sabha i.e. concerned union.

Regarding respondent No.20 it has been submitted by Mr.Trivedi that there is no record of his being in the employment either of the corporation or of the contractor after October, 1988 and so far as respondent No.28 is concerned he has categorically stated that he has never been in the employment either of the contractor of the corporation or of the Corporation itself. Mr.Trivedi has invited my attention to the averments made in this regard about respondent Nos. 20 and 28 in para 12 of the affidavit-in-rejoinder dated 4.10.1995 filed by one P.K.Das working as Deputy Manager (IR) with the Oil and Natural Gas Commission. To counter this affidavit-in-reply in rejoinder filed by Shri P.K.Das an affidavit of respondent No.15 Shri V.B.Patel was filed on behalf of the contesting respondents and I find that in this affidavit there is no specific denial of the averments made by the petitioner in para 12 of the aforesaid affidavit of Shri P.K.Das although the general and bald denial has been made. In order to meet the submission of Mr.Trivedi in this regard Mr.Shahani also invited my attention to the table given in para 1 of the award wherefrom he pointed out that the date of entering into the service etc. with regard to respondent Nos. 20 and 28 had been given in this table. In such cases when the interest of the group of the workmen is represented merely because certain particulars have been included in

the table in the body of the award on the basis of data given by the workmen, it cannot be said to be fait accompli for all times to come, more particularly, when the factual aspect of this matter is challenged on oath on the basis of the record of a body like ONGC. When the facts stated with regard to these two respondents in the aforesaid affidavit filed by Shri P.K.Das have not been specifically denied and these respondent nos. 20 and 28 themselves being parties and despite the service have not cared to file any counter, it is not possible for this Court to ignore such a factual position and therefore so far as these two respondents i.e. respondent Nos. 20 & 28 are concerned, there is no question of sustaining the relief of their regularisation in the service of the Oil and Natural Gas Commission when the whereabouts of respondent no.20 are not known after October, 1988 with the ONGC in any form. At this juncture, it may also be pointed out that respondent no.20 was not served till December, 1995 and the service was affected on him only after this Court's order dated 12.12.1995 and it was submitted by Mr.Shahani on 12.12.1995 that address of respondent no.20 will have to be ascertained and it was only thereafter that respondent no.20 was served for which the expenses are to be reimbursed by the petitioner as ordered by this court on 12.12.1995. Thus there is no case for considering or sustaining the relief of regularisation of the services of these 2 respondents in the corporation.

It has become very clear from the submission at the bar that the corporation in principle does not contest the relief of regularisation as granted by the Industrial Tribunal and the corporation has already regularised respondent nos. 1 to 12 in terms of the award from 1.1.1990 and is further prepared to regularise the other respondents except nos. 20 and 28 with effect from 1.1.1995. The limited question which remains for consideration in this background is as to from which date the regularisation is to be granted to the respondent nos. 13 to 28 except respondent nos. 20 and 28 because the regularisation to respondent nos. 1 to 12 stands granted from 1.1.1990 and these respondents have no further grievance. Mr.Shahani has submitted that the regularisation in service should be granted to all the respondents from the date they entered the service of the corporation whether directly with the corporation or through the contractor and according to him the date of entry into service of each and every respondent should be the date from which the regularisation is to be granted as no differentiation can be made on the ground that certain respondents have been directly appointed by the

Oil and Natural Gas Commission and others were appointed through the contractor because all the respondents were working in the Central Workshop Canteen which is required to be run by the respondent corporation as part of the statutory obligation. In this regard, Mr. Shahani placed reliance on A.I.R. 1995 S.C. Pg.1666 [Parimal Chandra Raha and Others Vs. Life Insurance Corporation of India and others]. Since the relief of regularisation as such is not in contest the lis between the petitioner and respondents No. 1 to 12 stands settled and the only question which remains to be considered is as to from which date the relief of regularisation is to be granted to other respondents. I find from Para 14 of the judgment on which Mr. Shahani himself has placed reliance that the Supreme Court had granted relief of regularisation in the case of Parimal Chandra Raha (Supra) from the date of filing of the writ petition by them before the High Court. In Parimal Chandra Raha's Case (Supra) 42 workmen working in the canteen of Life Insurance Corporation had approached the Supreme Court in the year 1985 by way of filing the petition under Article 32 of the Constitution of India and the Supreme Court had passed the order on 19.7.1986 directing them to approach the High Court and thereafter the petitions were filed in the High Court and from these writ proceedings which had been filed in the High Court the matter again came up before the Supreme Court in which the decision relied upon by Mr. Shahani was rendered. In the case at hand it has been submitted by Mr. Shahani that earlier Special Civil Application No. 6576 of 1989 had been filed by the workmen of Oil and Natural Gas Commission and the same was dismissed on 20.2.1991 and thereafter i.e. after dismissal of the petition by the High Court on 20.2.1991 a reference was made to the Industrial Tribunal on 25.6.1991. It is thus clear that the benefit of the period of pendency of earlier proceedings before the Supreme Court in writ petitions under Article 32 was not given to the workmen in Parimal Chandra Raha's case (Supra) by the Supreme Court and the relief was granted from the date the petitions were filed by the workmen in the High Court. In the case of Parimal Chandra Raha (Supra) the workmen had not raised any dispute and there was no award. It was straight way a case of first filing the petition under Article 32 in the Supreme Court and then the writ petition before the High Court which gave rise to the appeal as per the decision reported in A.I.R.1995 S.C.Pg.1666 (Supra). Keeping in view the entirety of the facts of the present case, on the basis of the view taken by the Supreme Court, earliest date from which the regularisation can be granted to the remaining respondents represented by Mr. Shahani except

No.20 & 28 is the date on which the reference was made to the Industrial Tribunal and the benefit of the pendency of the petition before the High Court earlier cannot be given as the same was not given even by the Supreme Court in the decision relied upon by Mr.Shahani himself. Even otherwise I do not find any rational behind the date 1.1.1995 as was suggested by Oil and Natural Gas Commission for these respondents and accordingly I find that the respondent nos. 13 to 19 and 21 to 27 are entitled to the relief of regularisation from 25.6.1991 i.e. the date on which the reference was made to the Industrial Tribunal after the dismissal of the Special Civil Application No. 6576 of 1989 on 20.2.1991 by this Court.

During the pendency of this Special Civil Application on behalf of respondent nos. 14 and 19 Civil Application No.4475 of 1996 had also been moved on 17.4.1996 to which the affidavit-in-reply had been filed on behalf of the Oil and Natural Gas Commission and a rejoinder thereto had been filed by one of the applicants Jadhav Narayan Madhav i.e. respondent No.14 in the main petition. Through this Civil Application it was submitted on behalf of respondent nos. 14 and 19 that they should be treated at par with respondent nos. 1 to 12 in the matter of regularisation and they should also be accorded regularisation from 1.1.1990 because both these respondents had been appointed on dates earlier than respondent no.12. There is no dispute that respondent no.12 had been appointed on 5.8.1984. Although respondent nos. 14 and 19 have claimed to have been appointed prior to 5.8.1994, document Annexure 'I' which was exhibit 15 before the Industrial Tribunal which has been annexed with the affidavit-in-reply to this Civil Application shows that as per the deposition made by respondent No.15 Patel Virchandbhai Bechardas who had joined the services of the corporation in 1984 there were only 10 to 12 employees at the time when he joined as per his deposition in para 3 of this document at exhibit 15 (Annexure 'I' in Civil Application). Besides this, it has been straight way stated in para 3 of the affidavit-in-reply in Civil Application that the date 1.3.1984 as was mentioned in the award with regard to Jadhav Narayan Madhav was incorrect and in the affidavit of Balagi Gangaram Bhagu which was filed before the Industrial Tribunal, it was categorically stated that Narayan Madhav had joined the canteen on 17.9.1984. This date 17.9.1984 is a date subsequent to the date of joining of respondent no.12 i.e. 5.8.1994. Thus, I do not find that there is any material on record to show that these two respondents who are applicants in Civil

Application should be taken to be senior to respondent nos. 1 to 12 as has been stated in para 4 of the Civil Application and even Mr.Shahani during the course of dictation of the order has stated that this averments has been made by mistake and that his claim is confined only against respondent no.12. Be that as it may there is no material even to treat these two respondents to be senior to respondent nos. 1 to 12 and therefore, their claim that they should be treated at par with respondent nos. 1 to 12 cannot be accepted in the facts and circumstances of the case as has been claimed by them in Civil Application and the Civil Application is hereby rejected.

However in the rejoinder to this Civil Application, it has been stated in para 2 that this Civil Application had been filed on 6.5.1996 and was listed before the Court on 9.5.1996. Thereafter, during summer vacation the petitioner corporation has utilised the time to pressurise the workmen and with that end in view a complaint no. 4 of 1996 had been filed before the J.M.F.C.Baroda against Mr.R.N.Sadhu, General Secretary of Baroda Mazdoor Sabha Union, Shri V.B.Patel and Shri D.V.Patel who are also concerned workmen. Shri V.B.Patel was charged with forgery of one identity card which was part of the evidence before the Industrial Tribunal, Baroda. Mr.Patel was arrested for a day and was enlarged on bail after 24 hrs. and that this had compelled several more workers to write letters for accepting regularisation with effect from 1.1.1995 as narrated in para 5 of the affidavit in reply in the Civil Application. It has been further stated that this had been done to bring pressure on the concerned workmen. The issue of Identity Card was very much there before the Tribunal as Exh. 14/7 and it could not have been made the subject matter of complaint before the J.M.F.C.,Baroda. It was submitted that proceedings in this regard could be initiated only by the concerned court i.e. Industrial Tribunal in accordance with the provisions of section 195(1)(b)(ii) of the Code of Criminal Procedure and the exception given thereunder. This controversy may not detain this Court any further for the simple reason that Mr.Trivedi appearing on behalf of the corporation under the instructions from the concerned officer i.e. Mr.Satpal Kundal, Deputy Chief Legal Advisor to the corporation who himself is present in the court has stated that the complaint had not been filed during vacation and after filing the Civil Application but the same had already been filed on 6.1.1996 and he has also stated that the corporation will either withdraw the complaint or will not prosecute the same and it has also been pointed out that the complaint

is at the initial stage only. Be that as it may the fact remains that the corportion in either case is not going to prosecute this complaint and therefore, it is not at all necessary for me to go into this controversy.

The learned counsel Mr.Shahani appearing for the respondent has also cited before me 1984(1) G.L.R. Pg.566 at page 598 para 57 and 1993(1) L.L.J. Pg.965. In para 57 of Sarabhai Chemicals Staff Association Vs. Sarabhai Chemicals & Another (Supra) deducible principles have been enumerated to choose the effective dates of benefits and in item (c) under para 57 the Division Bench has observed that ordinarily the award should be effective at least from the date of the Reference, and in exceptional circumstances, it can be retrospective. In Supreme Court decision in Indian Hume Pipe Co. Ltd. (Supra) the Supreme Court has held that the power of adjudicating authority is not limited to grant relief only from date of raising of industrial dispute. Industrial Disputes Act does not provide for such limitation. Tribunal or Labour Court can grant relief from a date anterior to the date on which dispute is raised. Thus this Supreme Court decision only lays down the power by Industrial Tribunal or Labour Court to grant relief and the date from which the relief is to be granted and that this power is not limited to the date of raising of the Industrial Dispute and it can be even prior to that. This proposition of law cannot be disputed. However, from which date the relief is to be granted or benefits are to be granted depends upon the facts and circumstances of the case in each and every case. The fact situation obtaining varies from case to case and the nearest case which could be made use of to the help of the respondents in the facts of the present case is Life Insurance Corporation's case on which the reliance had been placed by the learned counsel Mr.Shahani appearing for the respondents themselves and since in that case the relief had been granted from the date the writ petition was filed and on the basis of the parity for the case at hand, according to me the date from the reference was made should be the earliest date from which the relief could be granted to the respondents. Even in the Division Bench judgment of Sarabhai Chemicals Staff Association (Supra) the Division Bench has clearly observed that ordinarily the relief should be granted from the date of the reference.

The result of the adjudication as aforesaid is that this Special Civil Application partly succeeds to the extent that respondent nos. 1 to 12 are entitled to be regularised from 1.1.1990 with all the benefits as

ordered by the Industrial Tribunal and respondent nos. 13 to 19 and 21 to 27 shall be entitled to regularisation with effect from 25.6.1991 with all benefits as granted by the Industrial Tribunal in the impugned award and in respect of respondent nos. 20 and 28 it is made clear that they will not be entitled to any relief and qua these two respondents the award is set aside. The impugned award of the tribunal shall stand modified accordingly. Rule is made absolute in the terms as above. No order as to costs.
